

## 37 Am. Jur. 2d Fraud and Deceit § 128

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### Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

#### IV. False Representations

##### F. Intent to Deceive, or to Induce Reliance; Knowledge of Falsity

###### 3. Particular Kinds of Representations, Transactions, Relief, etc.

###### b. Negligent Misrepresentation

## § 128. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#) 13(3)

### A.L.R. Library

[Misrepresentations as to financial condition or credit of third person as actionable by one extending credit in reliance thereon, 32 A.L.R.2d 184](#)

Many states have recognized a cause of action in tort for negligent misrepresentation.<sup>1</sup> Moreover, in some jurisdictions, a cause of action for negligence is authorized by statute.<sup>2</sup> Although the requirements vary from state to state, to establish the elements of negligent misrepresentation, a plaintiff must generally show that—

- the defendant had a duty to exercise reasonable care in the giving of information.<sup>3</sup>
- the defendant supplied false information,<sup>4</sup> sometimes referred to as making a misrepresentation of a past or existing material fact.<sup>5</sup>

- the defendant made the misrepresentation negligently,<sup>6</sup> without exercising reasonable care in obtaining or relating the information,<sup>7</sup> or without reasonable ground for believing it to be true,<sup>8</sup> although it is not necessary that defendant actually possessed knowledge of the statement's falsity.<sup>9</sup>
- the plaintiff reasonably or justifiably relied upon the information given.<sup>10</sup>
- the plaintiff suffered damages proximately caused by the defendant's negligence<sup>11</sup> or from such reliance.<sup>12</sup>

Additional elements sometimes identified are—

- that there was privity between the parties, or a special relationship of trust or confidence creating a duty for one party to impart correct information to another.<sup>13</sup>
- that the representation was made by a defendant in the course of his or her business,<sup>14</sup> or in a transaction in which he or she had a pecuniary interest.<sup>15</sup>
- that the defendant intended that his or her statement would be acted upon by the plaintiff,<sup>16</sup> or that the false information was supplied for the guidance of others in their business.<sup>17</sup>
- that the defendant knew or should have known the representation would induce reliance on the part of the plaintiff.<sup>18</sup>

**Observation:**

"Negligent misrepresentation" is a lesser included claim of fraudulent misrepresentation, and it differs from fraudulent misrepresentation only in that while the latter requires knowledge that the pertinent statement was false, the former merely requires that the person who made the statement failed to exercise reasonable care or competence to obtain or communicate true information.<sup>19</sup>

**Caution:**

An action for negligent misrepresentation may be precluded by the provisions of a purchase contract covering the subject matter of the claim.<sup>20</sup>

**CUMULATIVE SUPPLEMENT**

**Cases:**

Lack of special relationship between parties distinct from and independent of the contract meant that plaintiffs failed to state negligent misrepresentation claim against defendants. [Rosenblum v. Island Custom Stairs, Inc.](#), 130 A.D.3d 803, 2015 WL 4254063 (2d Dep't 2015).

Under California law, the elements of a negligent misrepresentation cause of action are the same as those for intentional fraud, except respect to the requisite state of mind. [Villalpando v. Transguard Insurance Company of America](#), 17 F. Supp. 3d 969 (N.D. Cal. 2014).

Providers of in-flight entertainment on airlines did not adequately allege that record companies and music composers had no reasonable grounds for believing their representations to be true, precluding providers' California-law claim for negligent misrepresentation, where providers offered only bare allegation that defendants had no reasonable grounds for believing that representations concerning their intent to perform on purported promise to permit providers' continued reproduction of copyrighted sound records were true when made. [UMG Recordings, Inc. v. Global Eagle Entertainment, Inc.](#), 117 F. Supp. 3d 1092 (C.D. Cal. 2015).

As part of the duty-risk analysis applicable to negligent misrepresentation cases, the plaintiff must show that the risk of harm was within the scope of protection afforded by the duty breached. [Reel Pipe, LLC v. USA Comserv, Inc.](#), 427 F. Supp. 3d 786 (E.D. La. 2019).

To prevail on a claim for negligent misrepresentation under Massachusetts law, plaintiff does not have to prove an intent to deceive and need not prove that defendant knew his statements to be false. [Samia Companies LLC v. MRI Software LLC](#), 53 F. Supp. 3d 385 (D. Mass. 2014).

Under New York law, claim for negligent misrepresentation requires a fiduciary duty or special relationship that involves a closer degree of trust between the parties than that of an ordinary buyer and seller in order to find plaintiff's reliance on defendant's statements justified. [Prime Mover Capital Partners L.P. v. Elixir Gaming Technologies, Inc.](#), 898 F. Supp. 2d 673 (S.D. N.Y. 2012).

Plaintiff must allege the following elements in order to state a claim for negligent misrepresentation: (1) a misrepresentation of material fact in the course of the defendant's business, profession, or employment, or in any other transaction in which he has a pecuniary interest, (2) the defendant either knew of the misrepresentation, made the misrepresentation without knowledge of its truth or falsity, or should have known the representation was false, (3) the defendant intended to induce another to act on the misrepresentation, and (4) injury resulted to a party acting in justifiable reliance upon the misrepresentation. [In re Palm Beach Finance Partners, L.P.](#), 517 B.R. 310 (Bankr. S.D. Fla. 2013).

Negligent misrepresentation addresses negligence of knowledge of material fact and the transmittal of already known material facts. [Stechschulte v. Jennings](#), 298 P.3d 1083 (Kan. 2013).

In order to prove negligent misrepresentation, a plaintiff must show that there was a legal duty on the part of the defendant to supply correct information, there was a breach of that duty, and the breach caused plaintiff damage. [LSA-C.C. arts. 2315, 2316](#). [Granger v. Christus Health Central Louisiana](#), 144 So. 3d 736 (La. 2013).

At the threshold, to establish a claim for either intentional or negligent misrepresentation, a plaintiff must show that the defendant supplied plaintiff with false information, and summary judgment is appropriate if plaintiff has not provided evidence of this essential element. [Land Baron Inv. v. Bonnie Springs Family LP](#), 356 P.3d 511, 131 Nev. Adv. Op. No. 69 (Nev. 2015).

It is not the nature of the communication that impacts the viability of a negligent misrepresentation claim, nor is it sufficient that a plaintiff detrimentally changes his or her position as a consequence of the false information; the necessary piece in this puzzle

is that the plaintiff actually received or was made aware of the false statements and directly relied on those false statements. *Restatement (Second) of Torts* § 552 (1977). *Glassford v. Dufresne & Associates, P.C.*, 2015 VT 77, 124 A.3d 822 (Vt. 2015).

**[END OF SUPPLEMENT]**

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Footnotes

1      *Retrofit Partners I, L.P. v. Lucas Industries, Inc.*, 201 F.3d 155 (2d Cir. 2000) (applying Connecticut law); *Ragland v. U.S. Bank Nat. Assn.*, 209 Cal. App. 4th 182, 147 Cal. Rptr. 3d 41 (4th Dist. 2012); *Cole v. New England Mut. Life Ins. Co.*, 49 Mass. App. Ct. 296, 729 N.E.2d 319 (2000); *Coverdell v. Countrywide Home Loans, Inc.*, 375 S.W.3d 874 (Mo. Ct. App. S.D. 2012).  
As to negligent misrepresentations as to the credit or financial condition of another person, see § 127.  
The American Law Institute has indicated acceptance of the principles, at least in cases where a person negligently supplies information for the guidance of others. *Restatement Second, Torts* § 552.

2      *Hale v. George A. Hormel & Co.*, 48 Cal. App. 3d 73, 121 Cal. Rptr. 144 (4th Dist. 1975).

3      *Lavine v. American Airlines, Inc.*, 2011 WL 6003609 (Md. Ct. Spec. App. 2011); *Smith v. Woodwind Homes, Inc.*, 605 N.W.2d 418 (Minn. Ct. App. 2000); *Walker v. Town of Stoneville*, 712 S.E.2d 239 (N.C. Ct. App. 2011), review withdrawn, 717 S.E.2d 388 (N.C. 2011) and review withdrawn, 731 S.E.2d 834 (N.C. 2011); *Armstrong v. Collins*, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005).  
As to special relationship creating such a duty, see § 129.

4      *Lavine v. American Airlines, Inc.*, 2011 WL 6003609 (Md. Ct. Spec. App. 2011); *Coverdell v. Countrywide Home Loans, Inc.*, 375 S.W.3d 874 (Mo. Ct. App. S.D. 2012); *Armstrong v. Collins*, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005); *Key v. Pierce*, 8 S.W.3d 704 (Tex. App. Fort Worth 1999).

5      *Ragland v. U.S. Bank Nat. Assn.*, 209 Cal. App. 4th 182, 147 Cal. Rptr. 3d 41 (4th Dist. 2012).  
An investor's allegations that a corporation's former executive officers gave him revenue projections that were "arbitrary and capricious," "made with fraudulent intent," and "false and flawed" were insufficient to show how the revenue projections amounted to an untrue statement of "past or present material fact," as required to state a claim for negligent misrepresentation. *Trooien v. Mansour*, 608 F.3d 1020 (8th Cir. 2010) (applying Minnesota law).

6      *Futch v. Lowndes County*, 297 Ga. App. 308, 676 S.E.2d 892 (2009); *Lavine v. American Airlines, Inc.*, 2011 WL 6003609 (Md. Ct. Spec. App. 2011).

7      *Smallwood v. NCsoft Corp.*, 730 F. Supp. 2d 1213 (D. Haw. 2010) (applying Hawai'i law); *Armstrong v. Collins*, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005) (due care); *Medical Educ. Assistance Corp. v. State ex rel. East Tennessee State University Quillen College of Medicine*, 19 S.W.3d 803 (Tenn. Ct. App. 1999); *Cunningham v. Tarski*, 365 S.W.3d 179 (Tex. App. Dallas 2012), review denied, (Sept. 21, 2012); *Snyder v. Lovercheck*, 992 P.2d 1079 (Wyo. 1999).

8      *Ragland v. U.S. Bank Nat. Assn.*, 209 Cal. App. 4th 182, 147 Cal. Rptr. 3d 41 (4th Dist. 2012); *Kurtzenacker v. Davis Surveying, Inc.*, 2012 MT 105, 365 Mont. 71, 278 P.3d 1002 (2012); *Ehresmann v. Muth*, 2008 SD 103, 757 N.W.2d 402 (S.D. 2008).

9      *Jones v. Koons Automotive, Inc.*, 752 F. Supp. 2d 670, 73 U.C.C. Rep. Serv. 2d 127 (D. Md. 2010), subsequent determination, 2011 WL 768832 (D. Md. 2011) (applying Maryland law).

10     *Ragland v. U.S. Bank Nat. Assn.*, 209 Cal. App. 4th 182, 147 Cal. Rptr. 3d 41 (4th Dist. 2012); *Futch v. Lowndes County*, 297 Ga. App. 308, 676 S.E.2d 892 (2009); *Lavine v. American Airlines, Inc.*, 2011 WL 6003609 (Md. Ct. Spec. App. 2011); *Coverdell v. Countrywide Home Loans, Inc.*, 375 S.W.3d 874 (Mo. Ct. App. S.D. 2012); *Walker v. Town of Stoneville*, 712 S.E.2d 239 (N.C. Ct. App. 2011), review withdrawn, 717 S.E.2d 388 (N.C. 2011) and review withdrawn, 731 S.E.2d 834 (N.C. 2011); *Armstrong v. Collins*, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005); *Cunningham v. Tarski*, 365 S.W.3d 179 (Tex. App. Dallas 2012), review denied, (Sept. 21, 2012).

11     *Ragland v. U.S. Bank Nat. Assn.*, 209 Cal. App. 4th 182, 147 Cal. Rptr. 3d 41 (4th Dist. 2012); *Lavine v. American Airlines, Inc.*, 2011 WL 6003609 (Md. Ct. Spec. App. 2011); *Coverdell v. Countrywide Home*

12 Loans, Inc., 375 S.W.3d 874 (Mo. Ct. App. S.D. 2012); Cunningham v. Tarski, 365 S.W.3d 179 (Tex. App. Dallas 2012), review denied, (Sept. 21, 2012).

13 Futch v. Lowndes County, 297 Ga. App. 308, 676 S.E.2d 892 (2009).

14 § 129.

15 Coverdell v. Countrywide Home Loans, Inc., 375 S.W.3d 874 (Mo. Ct. App. S.D. 2012); Cunningham v. Tarski, 365 S.W.3d 179 (Tex. App. Dallas 2012), review denied, (Sept. 21, 2012).

16 Armstrong v. Collins, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005); Cunningham v. Tarski, 365 S.W.3d 179 (Tex. App. Dallas 2012), review denied, (Sept. 21, 2012).

17 Lavine v. American Airlines, Inc., 2011 WL 6003609 (Md. Ct. Spec. App. 2011).

18 Cunningham v. Tarski, 365 S.W.3d 179 (Tex. App. Dallas 2012), review denied, (Sept. 21, 2012).

19 § 130.

20 Fleming Companies, Inc. v. GAB Business Services, Inc., 103 F. Supp. 2d 1271 (D. Kan. 2000).

Business Radio, Inc. v. Relm Wireless Corp., 373 F. Supp. 2d 1317 (M.D. Fla. 2005), aff'd, 209 Fed. Appx. 899 (11th Cir. 2006) (applying Florida law).